IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4908 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUDESH GARG & 4 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BB NAIK for Applicant(s) : 1 - 5.
MR.SS PATEL APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 15/01/2007

ORAL JUDGMENT

1. The petitioners, officers of the Income-Tax Department, have approached this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”) and Article 226 of the Constitution for quashing Criminal Complaint

No.2948 of 1996 filed by respondent No.2 for the alleged offences punishable under Sections 504, 506(1) and 506(2) of the Indian Penal Code, 1860 (for short “the IPC”) which is pending in the Court of learned Metropolitan Magistrate, Ahmedabad. After the petition being entertained and admitted on 06.01.1997, interim relief staying the proceedings before the trial court was granted with the direction that, as soon as the notices were served on the respondents, the matter was to be listed for final hearing on 28.01.1997 under separate category as 'Stay pending trial/inquiry'. Thereafter the petition has been listed from time to time and hearing has been adjourned on one or the other grounds including on the basis that the original complainant was reported to have passed away, which turned out to be incorrect.

2. The original complaint has admittedly arisen when the premises of the complainant was searched by the petitioners. It is alleged in the petition

and not controverted by the respondents that on 16.08.1996, a team of officers of the Income-Tax Department had at, around 1:30 p.m., went to the office of Desai Builders Group, where two persons, namely, Nirav Desai and Bharat Desai, were asked to give their statements. At that time, several other persons entered the premises and interrupted the process of recording of statements. Those persons were equipped with weapons and they had started abusing and threatening the officers. Due to such obstruction and intimidation, the officers had to leave the office premises of Desai Builders without completing the investigation and a criminal complaint was field in that regard after briefing higher officers of the department. Another team of officers was directed to go to the office premises of Popular Construction Group and when the officers entered the chamber of the leading person of that group at around 3:30 p.m. and served the summons upon him under Section 131(1A) of the Income-Tax Act, respondent No.2 signed his

statement, went outside his chamber and telephoned some one. Then a group of persons led by named persons came rushing into the chamber and started abusing and threatening the petitioners. Some of the officers had to take treatment at the hospital because of injuries received by them during the scuffle and criminal complaint came to be filed by petitioner No.1 for the offences punishable under Sections 143,177,149,332,395 and 506(1) of the IPC and it was registered as CR.No.I-477 of 1996 at Navrangpura Police Station. That complaint was filed on 16.08.1996 at 11:15 p.m. It is alleged that, in both the aforesaid incidents, five persons were alleged to have been present on the same day at two different premises and abusing and threatening the Income-Tax officers. It is alleged by the petitioners that none of the accused persons was arrested by the police in spite of the complaints which were not properly investigated. On the other hand, the persons accused in the said complaints have, by way of a

counter-blast, filed a complaint against the present petitioners which is registered as Criminal Case No.2948 of 1996; and it is that complaint which is sought to be quashed by the present petition.

3. It was argued by learned counsel Mr.B.B. Naik, appearing for the petitioners that, even according to the allegations made in the complaint, petitioners were clearly discharging their official duty where they were obstructed and the cause for counter complaint arose. He submitted, on that basis, that the Court could not legally take cognizance of the alleged offences in the above circumstances as the sanction required under the provisions of Section 197 of the Code was admittedly not obtained. It was further submitted that the complaint in question was flied against the petitioners with an oblique motive and there was absolutely no chance of conviction of the petitioners, even as the complaint filed by the petitioners was being

entertained and required to be tried in accordance with law, since the petition to quash that complaint was stated to have been withdrawn.

4. Learned advocate Mr.R.C. Jani, appearing for the original complainant, respondent No.2, submitted that the alleged acts committed by the petitioners were not and could not be said to have been committed in discharge of official duty of the petitioners. He submitted that the petitioners had entered the office of the complainant and committed the offences in an unruly and high-handed manner as alleged in the complaint. He submitted that a detailed verification was recorded under the complaint. Since the Court had already taken cognizance of the offences punishable under Sections 504, 506(1) and 506(2) of the IPC by the order dated 29.08.1996, all the defences that may be available to the petitioners have to be raised in the trial court.

5. At the end of arguments, it was fairly conceded that the law on the subject of sanction required under the provisions of Section 197 was by now settled by the recent judgment of the Supreme Court in **Sankaran Moitra V/s. Sadhna Das and another [(2006)4 SCC 584]** wherein it is, by majority, held that the argument that want of sanction did not affect the jurisdiction of the Court to proceed cannot be accepted since the provisions of sub-section (1) of Section 197 and several decisions of the Supreme Court, clearly indicate that a prosecution hit by that provision cannot be launched without the contemplated sanction. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted. One cannot also accede to the request to postpone a decision on this question because that can only lead to the proceedings being dragged on in the trial court and a decision, here and now, would be more appropriate in the circumstances of the present case also. It is also categorically held

by the Apex Court in paragraph 25 of the said judgment that, if the alleged act was done in performance of duty or purported performance of duty, Section 197(1) of the Code of Criminal Procedure cannot be bypassed. The Supreme Court has referred its earlier judgment in **Matajog Dobey V/s. H.C. Bhari [AIR 1956 SC 44]** wherein, it was observed that there must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as that question will arise only at a later stage when the trial was proceeded on merits. What must be found out is, whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.

6. Following the ratio of above judgment, it clearly appears that sanction was required to be

obtained by the original complainant before the Court could take cognizance of the alleged offences and proceed further against the petitioners. Therefore, the petition is allowed and the impugned order dated 29.08.1996 in Criminal Case No.2948 of 1996 pending before learned Metropolitan Magistrate, Ahmedabad, taking cognizance and issuance of summons is set aside with liberty to respondent No.2 to apply for sanction of the appropriate authority. It is clarified that if the original complainant, i.e. respondent No.2 herein, applies and sanction is granted for prosecution of the petitioners, the Court concerned will take cognizance and in absence of such sanction, make appropriate order in accordance with law within a reasonable time of six months from today. Rule is made absolute accordingly with no order as to costs.

(D.H.WAGHELA, J.)

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